

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR 18-2945 WJ

JANY LEVEILLE, *et al.*,

Defendants.

OPPOSED MOTION FOR STATUS CONFERENCE

Defendant Subhanah Wahhaj, by and through undersigned counsel Ryan J. Villa and Justine Fox-Young, joined by Defendant Siraj Ibn Wahhaj, by and through counsel Erlinda O. Johnson and Thomas M. Clark, Hujrah Wahhaj, by and through counsel Donald Kochersberger and Marshall J. Ray, and Jany Leveille, by and through counsel Angelica M. Hall and Aric G. Elsenheimer, respectfully moves this Court to schedule an in-person status conference to ascertain when the parties' Joint Motion to Lift Stay as to Defendants Jany Leveille, Siraj Ibn Wahhaj, Hujrah Wahhaj and Subhanah Wahhaj and for Scheduling Conference [Doc. 416] may be heard so that the Defendants may prepare to litigate a myriad of pre-trial matters as well as to learn when the Court anticipates it will set the case for trial. As grounds therefore, counsel states as follows:

1. On September 11, 2018, a grand jury returned an Indictment, charging Defendants with possession of firearms by a non-citizen without status that permits firearms possession and conspiracy to commit that offense. *See* Indictment [Doc. 25]. On October 3, 2018, this Court entered an Order declaring the case complex. *See* Order [Doc. 49]. Several months later, on March 13, 2019, a Superseding Indictment was returned, adding counts related to alleged terrorism and kidnapping conspiracies, including (Count 1) Conspiracy to Provide Material Support to Terrorists, in violation of 18 U.S.C. §

2339A, (Count 2) Providing Material Support to Terrorists, in violation of 18 U.S.C. §§ 2339A & 2, (Count 3) Conspiracy to Murder an Officer or Employee of the United States, in violation 18 U.S.C. § 1117, (Count 4) Conspiracy to Commit an Offense Against the United States, in violation of 18 U.S.C. § 371, (Count 6) Conspiracy to Commit Kidnapping, in violation of 18 U.S.C. § 1201(c), and (Count 7) Kidnapping, in violation of 18 U.S.C. §§ 1201(a) & 2. *See* Superseding Indictment [Doc. 85].

2. Beginning in mid-2019, defense counsel began raising competency issues related to all defendants, except for Siraj Ibn Wahhaj. [Docs. 111, 174, 176, 179.] The Court ordered competency evaluations for four defendants. [Docs 120, 181, 187, 188].
3. On February 11, 2020, Defendant Lucas Morton, joined by Ms. Wahhaj, Jany Leveille, and Subhanah Wahhaj, filed an unopposed motion to stay proceedings while the competency issues were resolved. [Doc. 189]. On February 18, 2020, the Court granted the motion, staying this case pending the outcome of competency proceedings. [Doc. 192].
4. By January 19, 2022, all defendants with the exception of Lucas Morton had been found competent to stand trial. [Docs 309, 311, 387]. On July 20 and July 22, 2022, the Court held a competency hearing for Mr. Morton; however, it is unknown when the Court will rule as to Mr. Morton's competency.
5. Subhanah Wahhaj has filed speedy trial demands on April 6, 2022 and August 1, 2022. [Docs. 404, 446]. Siraj Ibn Wahhaj has filed seven speedy trial demands, beginning on March 17, 2021 [Docs. 298, 324, 341, 345, 397, 410, 438]. Hujrah Wahhaj filed a speedy trial demand on April 8, 2022. [Doc. 407].

6. On May 30, 2022, Defendants filed a Joint Motion to Lift Stay as to Defendants Jany Leveille, Siraj Ibn Wahhaj, Hujrah Wahhaj and Subhanah Wahhaj and for Scheduling Conference which remains pending and has not been set for a hearing. [Doc. 416]. The motion noted that this case has been pending for nearly four years, during which time all Moving Defendants have remained in custody, though they have all been found competent and have not waived their Sixth Amendment right to a speedy trial.
7. For nearly two and a half years, due in large part to pending competency issues and delays related to the ongoing COVID-19 pandemic, the Court has effectively maintained an open-ended continuance in this case. Defendants seek a status conference in order to ascertain when the Court intends to set the case for trial. *See United States v. Spring*, 80 F.3d 1450, 1458 (10th Cir. 1996)(“while it is preferable to set a specific ending date for a continuance, . . . an open-ended continuance for a *reasonable time period* is permissible.”)(emphasis added).
8. Counsel have consulted Assistant United States Attorney Kimberly Brawley who indicates that the Government opposes this motion.
9. Defendant Lucas Morton, through his counsel Matthew M. Beck and Joseph E. Shattuck, takes no position on this motion.

WHEREFORE, for all of the foregoing reasons, Subhanah Wahhaj, joined by Siraj Ibn Wahhaj, Hujray Wahhaj and Jany Leveille, respectfully requests that the Court schedule an in-person status conference in this matter.

Respectfully submitted,

/s/ Ryan J. Villa

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CERTIFICATE OF SERVICE

I hereby certify that on, August 2, 2022, a copy of the foregoing document was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Justine Fox-Young

JUSTINE FOX-YOUNG